

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAN UNG TRAN,

Plaintiff,

CIV. S-03-1689 PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Memorandum of Decision

Defendants.

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Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff supplemental security income benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. § 416.920(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. § 416.920(c). Third, the medical evidence

1 of the claimant's impairment is compared to a list of impairments
2 that are presumed severe enough to preclude work; if the
3 claimant's impairment meets or equals one of the listed
4 impairments, benefits are awarded. 20 C.F.R. § 416.920(d).
5 Fourth, if the claimant can do his past work benefits are denied.
6 20 C.F.R. § 416.920(e). Fifth, if the claimant cannot do his
7 past work and, considering the claimant's age, education, work
8 experience, and residual functional capacity, cannot do other
9 work that exists in the national economy, benefits are awarded.
10 20 C.F.R. § 416.920(f).

11 Defendant found plaintiff was eligible, suffered from
12 "chronic headaches, muscle/tension type, and chronic neck and low
13 back pain" but no listed impairment, that she retains the
14 physical capacity for a narrow range of medium work and a full
15 range of light work, and using the medical-vocational guidelines
16 as a framework, that she is not disabled. Tr. 15-16.

17 This court must uphold the Commissioner's determination
18 that a plaintiff is not disabled if the Commissioner applied the
19 proper legal standards and if the Commissioner's findings are
20 supported by substantial evidence. Sanchez v. Secretary of
21 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
22 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
23 1200 (9th Cir. 1990). Substantial evidence means more than a
24 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401 (1971),
25 but less than a preponderance, Bates v. Sullivan, 894 F.2d 1059,
26 1061 (9th Cir. 1990). It means such relevant evidence as a

1 reasonable mind might accept as adequate to support a conclusion.
2 Richardson, 402 U.S. at 401. The court cannot affirm the
3 Commissioner simply by isolating supporting evidence but must
4 consider the entire record, weighing evidence that undermines as
5 well as evidence that supports the Commissioner's decision.
6 Gonzalez v. Sullivan, 914 F.2d at 1200. If substantial evidence
7 supports administrative findings, or if there is conflicting
8 evidence that will support a finding of either disability or
9 nondisability, the finding of the Commissioner is conclusive,
10 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may
11 be set aside only if the proper legal standards were not applied
12 in weighing the evidence, Burkhart v. Bowen, 856 F.2d 1335, 1338
13 (9th Cir. 1988).

14 Plaintiff claims defendant erred by relying upon the
15 medical-vocational guidelines, which take no account of
16 limitations imposed by pain.

17 Defendant found that plaintiff "has chronic headaches,
18 muscle/tension type, and chronic neck and low back pain,
19 impairments that are severe." Tr. 12. Plaintiff testified that
20 the pain was disabling. Defendant found plaintiff's testimony
21 was not credible because:

22 Such allegations are greater than her condition
23 would be expected to produce and are not
24 substantiated by medical findings or the opinions
25 of examining or reviewing physicians. She has not
26 recently received significant or regular treatment
for any medical problems. Tr. 13-14.

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1 Defendant found that plaintiff suffers from chronic
2 headache, neck and low back pain. When a claimant produces
3 medical evidence of an underlying impairment reasonably likely to
4 be the cause of alleged pain, the administrative law judge may
5 not discredit the claimant's allegations of the severity of pain
6 solely on the ground they are unsupported by objective medical
7 evidence but may find a claimant is not credible for reasons,
8 supported by the record, that assure a reviewing court that a
9 claimant's testimony about the limitations imposed by pain is not
10 arbitrary. Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir.
11 1991). There must be specific, cogent reasons for disbelief and
12 without affirmative evidence of malingering the reasons must be
13 clear and convincing. Morgan v. Apfel, 169 F.3d 595, 599 (9th
14 Cir. 1995).

15 Defendant's decision in this case does not conform to
16 those legal standards and therefore must be reversed and remanded
17 for further proceedings.

18 Dated: May 9, 2005.

19 /s/ Peter A. Nowinski

20 PETER A. NOWINSKI

21 Magistrate Judge
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